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14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 LA ALLIANCE FOR HUMAN RIGHTS,  
17 et al.,

18 Plaintiffs,

19 v.

20 CITY OF LOS ANGELES, a Municipal  
21 entity, et al.,

22 Defendants.

Case No. CV 20-02291 DOC (KES)

**BRIEF OF DEFENDANT CITY OF  
LOS ANGELES IN RESPONSE TO  
COURT'S PRELIMINARY  
INJUNCTION TO BE ISSUED  
MAY 22, 2020 [DOCKET NO. 108]**

**Hon. David O. Carter**  
**United States District Judge**

23  
24 Defendant City of Los Angeles respectfully submits this brief in response to the  
25 Court's May 15, 2020, Minute Order setting forth a preliminary injunction to be issued on  
26 May 22, 2020. Dkt. 108.  
27  
28

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## 1 **I. INTRODUCTION**

2 The City of Los Angeles (the “City”) appreciates the Court’s early efforts, even  
 3 before this case is at issue, to help resolve the region’s homelessness crisis in  
 4 collaboration with a diverse group of stakeholders. Eight days ago, the Court, on its own  
 5 motion, directed the City and the County of Los Angeles (“County”): (1) to create a plan  
 6 to relocate people experiencing homelessness away from freeway onramps and  
 7 underpasses and into shelters; (2) to strike an accord with the Plaintiffs and Intervenor  
 8 that would accomplish this objective; and (3) to do all of this within less than one  
 9 week. If the parties could not agree, the Court stated, it would impose a Preliminary  
 10 Injunction compelling implementation of this relocation and shelter order on Friday,  
 11 May 22.

12 On May 15, within less than 48 hours of the Court’s directive, the City  
 13 confidentially submitted a plan to implement the Court’s goal of creating a sufficient  
 14 number of shelter opportunities for homeless people living immediately adjacent to  
 15 freeway entrance and exit ramps and under freeways in Los Angeles, but within the  
 16 larger context of the City’s response to provide shelter for homeless people at risk from  
 17 COVID-19. The City has since filed publicly its enhanced plan with a commitment to  
 18 create housing solutions for more than 6,100 people experiencing homelessness within  
 19 10 months—an unprecedented effort in the history of Los Angeles.

20 But while the parties—reflecting diverse and sometimes conflicting interests, from  
 21 downtown business owners to people experiencing homelessness to City and County  
 22 governments with different resources and scopes of authority—made rapid, substantial  
 23 progress, we could not reach full agreement on an alternative plan within the five days  
 24 allotted by the Court. In particular, the City’s ability to create new shelter is contingent  
 25 on County funding the appropriate levels of necessary support and operating services for  
 26 that shelter, to which County has yet to agree. In addition, while the City, County, and  
 27 Plaintiffs all agree with the Court that the City may enforce, consistent with *Martin v.*  
 28 *City of Boise*, state and local laws after offering adequate alternative shelter to

1 individuals experiencing homelessness living in the vicinity of a freeway, the  
2 Intervenor did not agree.

3 As a result, the City requests that this Court permit the parties two weeks to  
4 continue their negotiations before deciding whether to impose its proposed Preliminary  
5 Injunction. During that time, the City will provide more detail, on a Council District-by-  
6 Council District basis, about its alternative plan, including those parts of the plan that  
7 directly impact persons living under or near freeways; identify, with specificity, what  
8 support and services each part of the plan needs from the County; and strive to seek  
9 agreement from the County to match the City's commitment. The City may request the  
10 Court's assistance in bringing these negotiations to a successful conclusion.

11 Granting the parties more time to suggest and pursue further actions makes  
12 compelling sense, given the conundrum created by the various responses the City and  
13 County have been forced to consider because of the effects of the COVID-19 pandemic  
14 on their homeless populations, and the excruciating financial constraints on City and  
15 County governments imposed by the pandemic-fueled cratering of the economy.

16 If the Court is not inclined to give the parties more time to reach a collaborative  
17 solution to the Court's concerns, then the City submits the following objections.  
18 Fundamentally, the Preliminary Injunction violates the separation of powers. The  
19 concept of separation of powers between the executive, legislative and judiciary  
20 branches is more than a constitutional doctrine; it is a practical, functional division of  
21 authority, entrusting to each branch of government those decisions for which it has  
22 expertise and primary responsibility. How to protect as many members of a city's  
23 homeless community as possible in the midst of the pandemic is literally a matter of life  
24 or death. In such a circumstance, the Court's efforts to substitute its judgment for that of  
25 the local government and public health officials best equipped to deal with, and  
26 constitutionally responsible for handling, this public health crisis violates this separation.

27 Moreover, there is no legal authority for the Court to issue this injunction *sua*  
28 *sponte*. The Court stayed this case. There is no evidentiary record—the most that could

1 be said is that there have been presentations and conversations surrounding settlement  
 2 proposals. No party sought the relief the injunction would impose. Had Plaintiffs  
 3 sought this relief—which they have not—they would lack standing to seek it. And even  
 4 if they had such standing, Plaintiffs would be unable to demonstrate they satisfy all the  
 5 prerequisites to injunctive relief, including, importantly, the likelihood they would  
 6 prevail on the merits. In short, the injunction should not issue, especially not in the  
 7 current circumstances.

8 Finally, if the Preliminary Injunction does issue, the City requests this Court  
 9 immediately stay its order pending review by the Ninth Circuit Court of Appeals.

## 10 **II. RELEVANT PROCEDURAL HISTORY AND BACKGROUND**

### 11 **A. The City’s Pre-Litigation Progress In Housing Unsheltered Angelenos**

12 Through Proposition HHH, passed in 2016, the City has committed \$1.2 billion to  
 13 build 10,000 supportive housing units over the next decade as a permanent solution to  
 14 the crisis of homelessness affecting Los Angeles, and has expended extraordinary efforts  
 15 to make almost 6,000 units ready for occupancy in the next 3 years.<sup>1</sup> But these more  
 16 permanent solutions take time, so the City is constantly identifying and developing  
 17 temporary housing solutions for persons experiencing homelessness.

18 That is why the City initiated the A Bridge Home (ABH) shelter program in 2018  
 19 to create 222 shelter beds in each of the 15 Council Districts (3,330 beds in total). To  
 20 date, the City has opened 13 ABH shelters, creating 973 additional shelter beds, and the  
 21 City expects 14 additional ABH shelters to be completed and opened by the end of 2020,  
 22 creating 1,067 more shelter beds.<sup>2</sup> The City continues to explore and implement a mix  
 23

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24  
 25 <sup>1</sup> <https://www.lamayor.org/hhh-projects-development-details>.

26 <sup>2</sup> The number of beds in each ABH shelter has currently been reduced to allow for  
 27 appropriate social distancing pursuant to Center for Disease Control and Prevention  
 28 (“CDC”) and Los Angeles County Department of Public Health (“DPH”) guidelines.



1 of temporary shelter and housing solutions—from rental subsidies to modular housing to  
 2 safe parking to hotel and motel conversions—to serve a diverse homeless population.  
 3 And the City continues to do so despite its financial condition: the City’s proposed  
 4 budget for Fiscal Year 2020-2021 acknowledges it will have to reduce expenditures to  
 5 cover almost \$600 million in projected revenue lost due to COVID-19,<sup>3</sup> but it still  
 6 commits over \$429 million to housing and services for persons experiencing  
 7 homelessness.<sup>4</sup>

### 8 **B. The COVID-19 Pandemic And This Action**

9 On March 4, 2020, California Governor Gavin Newsom, the County Board of  
 10 Supervisors, and Mayor of Los Angeles Eric Garcetti declared an emergency in light of  
 11 the COVID-19 pandemic, and initiated measures to protect the public health.<sup>5</sup> On  
 12 March 13, 2020, President Donald Trump declared a National emergency as of March 1,  
 13 2020.<sup>6</sup>

14 On March 10, 2020, Plaintiffs LA Alliance for Human Rights, Joseph Burk, Harry  
 15 Tashdijan, Karyn Pinsky, Charles Malow, Charles van Scoy, George Frem, Gary Whitter  
 16 and Leandro Suarez (collectively “Plaintiffs”) initiated this action. They assert fourteen  
 17 federal and state claims against the City and the County for monetary, equitable and  
 18 injunctive relief, contending Defendants have not made sufficient progress in providing  
 19 housing and other services to the homeless population, which failure has resulted in  
 20 \_\_\_\_\_

21 <sup>3</sup> See <https://lacontroller.org/financial-reports/revised-revenue-forecast-2020-2021>.

22 <sup>4</sup> See <http://cao.lacity.org/budget20-21/BudgetSummary/mobile/index.html>.

23 <sup>5</sup> See [https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf)  
 24 [Proclamation.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf) (Governor Newsom emergency proclamation);  
 25 <http://www.publichealth.lacounty.gov/phcommon/public/media/mediapubhpdetail.cfm?prid=2248>  
 26 [rid=2248](http://www.publichealth.lacounty.gov/phcommon/public/media/mediapubhpdetail.cfm?prid=2248) (Board of Supervisors declares emergency);  
 27 [https://www.lacity.org/highlights/mayor-garcetti-strengthens-readiness-against-](https://www.lacity.org/highlights/mayor-garcetti-strengthens-readiness-against-coronavirus-declaring-local-emergency)  
 28 [coronavirus-declaring-local-emergency](https://www.lacity.org/highlights/mayor-garcetti-strengthens-readiness-against-coronavirus-declaring-local-emergency) (Mayor Garcetti declares local emergency).

<sup>6</sup> See [https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/)  
[emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/)



1 impassable sidewalks and exposed the public to health risks, environmental hazards,  
 2 increased crime, and untreated mental illness and addiction. Dkt. 1. Plaintiffs are  
 3 demanding that Defendants provide immediate shelter for all homeless individuals to  
 4 abate the degradation of the cities and communities. *Id.* at ¶ 18. On March 17 and  
 5 March 18, 2020, homeless rights advocates Orange County Catholic Worker (“OCCW”),  
 6 CANGRESS dba Los Angeles Community Action Network (“LA CAN”) and Los  
 7 Angeles Catholic Worker (“LACW”) were allowed to intervene. Dkt. 18 and 29.

8 Six days after the Complaint was filed, on March 19, 2020, the Court scheduled  
 9 an emergency status conference and invited various City, County, and other related  
 10 officials to attend. Dkt. 12; Dkt. 17. The Mayor, the President of the City Council, and  
 11 the City Attorney all attended the status conference because the City agreed the parties  
 12 should not forgo this opportunity to address the homelessness crisis, despite the legal  
 13 and factual deficiencies of Plaintiffs’ Complaint. The City agreed to stay all proceedings  
 14 to allow the Court to facilitate immediate settlement negotiations among the parties and  
 15 the Court to try and reach an amicable resolution. *See e.g.*, Transcript of 3/19/20  
 16 Conference, Dkt. 39. All litigation in the case remains stayed to this day.

### 17 **C. The City’s Efforts To Provide Shelter And Hygiene Facilities During The** 18 **COVID-19 Pandemic Follow CDC And DPH Guidelines**

19 In order to help stop the spread of the novel coronavirus, the Center for Disease  
 20 Control and Prevention (“CDC”) and the Los Angeles County Department of Public  
 21 Health, (“DPH”) have issued various guidelines, including safe hygiene practices, social  
 22 distancing, and wearing masks.<sup>7</sup> In the two months since the Federal, State and local  
 23 emergencies were declared, the City, in coordination and cooperation with the County,  
 24

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25 <sup>7</sup> *See e.g.* [https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-](https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html#coalition)  
 26 [shelters/unsheltered-homelessness.html#coalition](https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html#coalition);  
 27 [http://publichealth.lacounty.gov/media/coronavirus/docs/homelessness/FAQ-](http://publichealth.lacounty.gov/media/coronavirus/docs/homelessness/FAQ-PeopleExperiencingHomelessness.pdf)  
 28 [PeopleExperiencingHomelessness.pdf](http://publichealth.lacounty.gov/media/coronavirus/docs/homelessness/FAQ-PeopleExperiencingHomelessness.pdf)

1 and in accordance with the guidelines and recommendations instituted by the CDC and  
2 DPH, has: (a) opened 24 emergency shelters at recreational centers across the City,  
3 providing 1,012 beds and 111 safe parking sites for homeless individuals under the Mass  
4 Shelter Expansion Program; (b) contracted with 12 hotels and motels to house homeless  
5 Angelenos under Project Roomkey,<sup>8</sup> totaling 962 rooms; and (c) set up 305 trailers  
6 leased from the State of California to provide Tier 1 housing or to supplement Project  
7 Roomkey. 4/30/20 Joint Progress Report, Dkt. 88.

8 The City further installed sanitation units throughout the City, consisting of 360  
9 hand-washing stations, 56 of which are in the Skid Row area, and 120 portable toilets  
10 (with sinks), 54 of which are in the Skid Row area, as well as an additional 4 toilets in  
11 locations identified as “high-traffic areas.” 3/23/20 Status Report, Dkt. 43; 4/13/20  
12 Status Report, Dkt. 65. The City distributed over 5,000 reusable and washable masks in  
13 Skid Row, set up COVID-19 testing sites for homeless residents, and arranged for the  
14 Los Angeles Convention Center to serve as a Medical Relief Center. Dkt. 65. In  
15 addition to hygiene stations and portable toilets, the City deployed 12 mobile shower  
16 trailers (consisting of 8 showers each), and eased restrictions on vehicle and parking  
17 laws to help homeless residents living in vehicles. Dkt. 43. Furthermore, the City  
18 entered into temporary agreements with eight YMCA facilities across the City,  
19 providing access to bathrooms and showers, and the City provided free transportation to  
20 those YMCA facilities and emergency shelters. Dkt. 65. To date, over 800 community  
21 members have utilized the YMCA services, resulting in over 4,600 showers. The City  
22 continues to engage in additional efforts to safely and securely shelter homeless  
23 residents in accordance with CDC and DPH guidelines. Among other things, the City is  
24  
25

26 \_\_\_\_\_  
27 <sup>8</sup> Project Roomkey is a collaborative State, County, and City effort to secure hotel and  
28 motel rooms for the vulnerable homeless population.

1 attempting to locate additional safe parking locations,<sup>9</sup> and is searching for additional  
2 housing locations and opportunities, including ABH and modular housing.

3 **D. Settlement Discussions Concerning 16<sup>th</sup> and Maple**

4 In early April, the Court requested the parties to begin settlement discussions,  
5 initially focused on relocating the recreational vehicles parked along the I-10 Freeway  
6 near downtown Los Angeles. 4/7/20 Transcript at 54:4- 60:19; 4/10/20 Order, Dkt. 62.  
7 The parties focused on a site owned by the California Department of Transportation  
8 (“Caltrans”) at 16<sup>th</sup> and Maple Streets. The day before the parties were to discuss this  
9 site in Court, and unbeknownst to counsel at the time, the City received a hazardous  
10 waste assessment from Caltrans indicating concerns with the site “...based on the  
11 location of the parcel being directly under the heavily travelled I-10 Freeway and past  
12 use of leaded gasoline, there is a high probability that the unpaved soil areas on the  
13 parcel and around the perimeter of the parcel at the columns and fence will contain  
14 hazardous waste concentrations of lead.” 4/10/20 Caltrans report, Dkt. 103-1 at p. 3; see  
15 also Dkt. 77. The Court then held an emergency status conference on April 23, 2020  
16 regarding the suitability of using the 16<sup>th</sup> and Maple site. 4/15/20 Order, Dkt. 70.

17 **E. The Proposed Preliminary Injunction**

18 On May 13, the Court, *sua sponte*, said it was considering entering a preliminary  
19 injunction mandating Defendants relocate and provide shelter to homeless residents  
20 living under freeway overpasses and underpasses or near ramps unless the parties came  
21 up with a better plan. Dkt. 103; see also 5/13/20 Transcript at pp. 106-125, Dkt. 112.  
22 As evidentiary support for the proposed relief, the Court cited, in part, a colloquy  
23 between the Court and counsel for the City from the April 23 conference. Dkt. 103, fns.  
24 2, 3.

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25  
26 <sup>9</sup> Although a site at 749 S Los Angeles Street was previously agreed upon by all parties,  
27 Plaintiffs reneged on their agreement after neighborhood residents and businesses  
28 complained about the site. *See e.g.*, 4/27/20 Joint Status Report, Dkt. 80 and 4/30/20  
Defendants’ Joint Progress Report, Dkt. 88.

1 The Court ordered the parties to return to Court two days later, on May 15, 2020,  
2 to provide it with an estimate of the number of persons experiencing homelessness who  
3 shelter on freeway overpasses and underpasses and near on and off ramps, and with a  
4 better plan. Dkt. 106. The City submitted, confidentially, its plan to address the Court's  
5 concerns on the morning of May 15, before that day's hearing began.

6 At the May 15 hearing, experts from the Los Angeles Homeless Services  
7 Authority ("LAHSA") opined that, in the midst of the COVID-19 emergency,  
8 prioritizing people experiencing homelessness under freeways should not be the region's  
9 principal response to addressing the needs of the homeless population in the midst of the  
10 pandemic crisis. The Court responded by vacating its previous briefing schedule, stating  
11 the preliminary injunction would issue May 22, and inviting the parties to avoid the  
12 injunction by again submitting an alternative plan by Tuesday, May 19. When the City  
13 requested an opportunity to be heard on the preliminary injunction, the Court ordered  
14 briefs due by 5:00 pm the next day, Saturday, May 16. 5/15/2020 Transcript at 46:10-  
15 47:10, Dkt. 117. Later that day, the Court issued a written order allowing the parties  
16 until Thursday, May 21, to submit briefs on the Court's injunction. Dkt. 108.

17 Over the ensuing weekend and first days of this week, the City worked with the  
18 County, Plaintiffs, and Intervenor to agree on a joint plan, based largely on the plan the  
19 City had previously submitted confidentially. The parties made significant progress in  
20 this short time period, including agreeing to pilot projects, but were unable to fully  
21 conclude an agreement on the alternative plan. The major outstanding issue is who  
22 should pay for the necessary operational support and services required for each shelter  
23 location to be created by the City. In addition, the City, County, and Plaintiffs agreed  
24 with the Court that the City may take enforcement action, if necessary, consistent with  
25 *Martin v. City of Boise*, after offering adequate alternative shelter to homeless people  
26 living in the vicinity of a freeway, but the Intervenor did not.

### 1 **III. ARGUMENT**

2 The City shares the Court’s concern for the safety and health of homeless  
3 residents living near freeways, ramps, underpasses and overpasses. It also appreciates  
4 the efforts the Court has undertaken to mediate a resolution of this case for the benefit of  
5 the parties, unhoused residents, and the community. But the Preliminary Injunction is  
6 not the proper vehicle, procedurally or constitutionally, to achieve these goals.

#### 7 **A. Standard of Review**

8 A preliminary injunction is an “extraordinary and drastic remedy” and one that  
9 should not be granted unless a moving party demonstrates that it both: (1) has Article III  
10 standing, *Or. Prescription Drug Monitoring Program v. United States DEA*, 860 F.3d  
11 1228, 1233 (9th Cir. 2017); and (2) is entitled to preliminary injunctive relief. *Mazurek*  
12 *v. Armstrong*, 520 U.S. 968, 972 (1997). To establish entitlement to preliminary  
13 injunctive relief, plaintiff must make a “clear showing” that: (1) they are “likely to  
14 succeed on the merits,” (2) “likely to suffer irreparable harm”; (3) “the balance of  
15 equities tips in [their] favor”; and (4) the injunction “is in the public interest.” *Winter v.*  
16 *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

17 Mandatory injunctions, like the one to be issued here, are “particularly  
18 disfavored.” *Anderson v. United States*, 612 F.2d 1112, 1114-15 (9th Cir. 1979). Such  
19 injunctions are subject to higher scrutiny and carry an even heavier burden of persuasion  
20 than prohibitory injunctions—they can be issued only if the plaintiff establishes that the  
21 facts and law “clearly favor” plaintiff. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th  
22 Cir. 2015); *see Washington v. Cent. Puget Sound Reg’l Transit Auth.*, 533 Fed. Appx.  
23 716, 719 (9th Cir. 2013).

#### 24 **B. The *Sua Sponte* Issuance Of The Injunction Is Procedurally Improper**

25 The City re-emphasizes its strong desire to engage collaboratively with the Court  
26 and all parties. The City’s active participation in these proceedings underscores this  
27 desire to work together to make progress on our homelessness crisis. But both for this  
28 Court to consider and to preserve its appellate rights, the City offers the following

1 objections to the Preliminary Injunction.

2 No party moved for injunctive relief; the Court issued the injunction *sua sponte* in  
3 the midst of settlement discussions. There is no applicable authority for a preliminary  
4 injunction on a *sua sponte* basis, and *Armstrong v. Brown*, 768 F.3d 975, 980 (9th Cir.  
5 2014) and *Clement v. Cal. Dep't of Corr.*, 364 F.3d 1148, 1150 (9th Cir. 2004) do not  
6 support the proposition that the Court can issue one here. In *Armstrong*, the Court's *sua*  
7 *sponte* modification of a permanent injunction followed years of litigation and was made  
8 on a thorough and detailed evidentiary record. *Armstrong*, 768 F.3d at 978-80.  
9 Similarly, the district court's *sua sponte* permanent injunction in *Clement*, 364 F.3d  
10 1148, was issued after a well-developed record and litigation, and followed a noticed  
11 motion for summary judgment. *Id.* at 350-51. Notably, in *Clement*, there is no  
12 indication that the propriety of the district court issuing the injunction *sua sponte* was  
13 challenged.

14 Conversely, the limited circumstances that authorized a *sua sponte* injunction in  
15 *Armstrong* and *Clement* do not exist here: there has been no lengthy litigation and there  
16 is no evidentiary record. The preliminary injunction was issued two months after the  
17 case was initiated and while the case is stayed, before any defendant responded to the  
18 Complaint and before any discovery was exchanged. The lack of any evidentiary  
19 foundation would independently invalidate the injunction. *See e.g., Thomas v. County of*  
20 *Los Angeles*, 978 F.2d 504, 508-509 (9th Cir. 1992) (injunction improperly entered  
21 without finding of fact and without resolving serious factual disputes).

### 22 **C. The Injunction Is Impermissibly Vague**

23 The injunctive relief proposed by the Court does not meet the requirements of  
24 Rule 65(d)(1), which requires that an injunction both “state its terms specifically” and  
25 “describe in reasonable detail... the act or acts restrained or required.” Fed. R. Civ. P.  
26 65(d)(1). The purpose of this rule is “to prevent uncertainty and confusion on the part of  
27 those faced with injunctive orders, and to avoid the possible founding of a contempt  
28 citation on a decree too vague to be understood.” *Schmidt v. Lessard*, 414 U.S. 473, 475



1 (1974) (noting that “the specificity provisions of Rule 65(d) are no mere technical  
2 requirements”).

3 The Preliminary Injunction requiring that people living “near” freeway  
4 overpasses, underpasses, and ramps be relocated “a sufficient distance away” from such  
5 areas is impermissibly vague. “Near,” “away,” and “a sufficient distance” are  
6 geographically vague terms that lack any specificity as to the precise distance the City  
7 must relocate someone before they risk a contempt citation.

8 The temporal scope of the injunction is equally vague. It is unclear whether the  
9 injunction orders a one-time relocation of the individuals currently living within the  
10 vaguely-contemplated geographic scope, followed by immediate enforcement of “anti-  
11 camping laws” to ensure that no individuals can return, or if it imposes a continuing  
12 obligation on the City to constantly relocate and provide shelter to individuals who may,  
13 in the future, reside “near” freeways. These imprecisions render the Preliminary  
14 Injunction too vague to provide appropriate notice to the parties of the specific steps  
15 necessary to comply with it (or what conduct would constitute contempt). *See Schmidt*,  
16 414 U.S. at 475.

#### 17 **D. The Injunction Would Be Adverse To Public Health Recommendations**

18 In the midst of the pandemic, the advice of public health officials is to leave  
19 unsheltered individuals and encampments where they are if individual housing options  
20 are unavailable. *See* [https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-](https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html#coalition)  
21 [shelters/unsheltered-homelessness.html#coalition](https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html#coalition). Thus, to the extent the Court is  
22 requiring the City to order an unsheltered resident “to relocate an adequate distance  
23 away from freeway locations” (Dkt. 108 at p. 6) to a different area in the City rather than  
24 an offered shelter, the injunction requires the City to contradict public health guidelines.

#### 25 **E. Separation Of Powers And Article III Preclude The Injunction**

26 While the City appreciates the Court’s efforts to help resolve heretofore  
27 intractable issues relating to homelessness, the separation of powers doctrine dictates  
28 that “it is not the role of courts, but that of the political branches, to shape the institutions



1 of government in such fashion as to comply with the laws and the Constitution.” *Lewis*  
2 *v. Casey*, 518 U.S. 343, 349 (1996) (holding that injunction to correct “inadequacy” of  
3 prison policies on a systemwide basis exceeded court’s jurisdiction); *Rizzo v. Goode*,  
4 423 U.S. 362, 378-79 (1976) (when a party seeks to enjoin a local government practice,  
5 its case “must contend with the well-established rule that the Government has  
6 traditionally been granted the widest latitude in the dispatch of its own internal affairs”);  
7 *see also Midgett v. Tri-Cty. Metro. Transp. Dist. of Oregon*, 254 F.3d 846, 850-51 (9th  
8 Cir. 2001) (“a federal court must exercise restraint when a plaintiff seeks to enjoin any  
9 non-federal government agency”).

10 Indeed, in prior cases involving municipal laws and practices affecting unhoused  
11 persons, the Ninth Circuit has limited the scope of judicial relief based on separation of  
12 powers principles:

13 We do not suggest that Los Angeles adopt any particular social policy,  
14 plan, or law to care for the homeless. [] We do not desire to encroach  
15 on the legislative and executive functions reserved to the City Council  
16 and the Mayor of Los Angeles. There is obviously a ‘homeless  
17 problem’ in the City of Los Angeles, which the City is free to address  
18 in any way that it sees fit, consistent with the constitutional principles  
19 we have articulated.

18 *Jones v. City of L.A.*, 444 F.3d 1118, 1138 (9th Cir. 2006) *vacated by* 505 F.3d 1006 (9th  
19 Cir. 2007) (internal citations omitted).

20 Insofar as the Preliminary Injunction dictates how the City must prioritize the  
21 sheltering of certain persons experiencing homeless over others, and the manner in  
22 which it must spend its tightly limited and decreasing funds, it reaches beyond the  
23 constitutional limits of the Court’s authority.

24 The preliminary injunction here also exceeds the Court’s Article III jurisdiction  
25 for three reasons. First, the injunction seeks to redress a harm identified by the Court,  
26 not a “case or controversy” presented by Plaintiffs. Nowhere in the Complaint do  
27 Plaintiffs allege they were harmed as a result of encampments in overpasses,  
28 underpasses or near freeway ramps.

1 Second, to the extent the Complaint requests the Court to order the City to build  
2 shelters and housing, Plaintiffs lack standing to seek such broad prophylactic injunctive  
3 relief. To meet the “irreducible constitutional minimum” of Article III standing,  
4 Plaintiffs must establish: (1) an injury-in-fact, that is, an invasion of a legally protected  
5 interest which is (a) concrete and particularized and (b) actual or imminent and not  
6 conjectural or hypothetical; (2) a causal connection between the injury and the conduct  
7 complained of—the injury has to be fairly traceable to the defendant’s challenged  
8 conduct and not the result of the independent action of third parties; and (3) it is likely,  
9 and not merely speculative, that the injury will be redressed by a favorable decision.  
10 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

11 Here, Plaintiffs have not shown that they suffered a concrete and particularized  
12 injury that was caused by any conduct of the City, nor that any of their alleged injuries  
13 could be redressed by a favorable decision. Instead, their claims are premised on  
14 generalized grievances about the effects of homeless encampments on business owners  
15 and residents, and their disapproval of the manner in which the City allocates its  
16 resources in addressing the homelessness crisis. Indeed, the causal connection between  
17 providing additional support for unhoused individuals and the harms alleged by  
18 Plaintiffs is entirely too attenuated and speculative to support jurisdiction under Article  
19 III. *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 44-45 (1976); *Linda R. S. v.*  
20 *Richard D.*, 410 U.S. 614, 618 (1973). Article III precludes the Court from dictating  
21 how the City exercises its discretionary spending to address issues arising out of  
22 homelessness. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 346 (2006); *Allen v.*  
23 *Wright*, 468 U.S. 737, 760 (1984).

24 Finally, the lack of a “case or controversy” is also evidenced by the fact that the  
25 Preliminary Injunction is focused on harms to unhoused persons who are not before the  
26 Court, and not any harm alleged by Plaintiffs. *See* Dkt. 108 at p. 4. Plaintiffs do not  
27 have standing to represent the interests of third-party unhoused persons. *Linda R.S.*, 410  
28 U.S. at 619 (“a private citizen lacks a judicially cognizable interest in the prosecution or

1 nonprosecution of another”); *Kowalski v. Tesmer*, 543 U.S. 125, 129 (2004). Rather,  
2 Plaintiffs must “assert [their] own legal rights and interests and cannot rest [their] claim  
3 to relief on the legal rights or interests of third parties.” *Warth v. Seldin*, 422 U.S. 490,  
4 499 (1975); *see also Broadrick v. Oklahoma*, 413 U.S. 601, 610 (1973)<sup>10</sup> The Court thus  
5 lacks jurisdiction to issue the preliminary injunction.

## 6 **F. The Winter Factors Do Not Support A Preliminary Injunction**

### 7 **1. Plaintiffs cannot show they are likely to succeed on the merits**

8 The Court’s discussion of the likelihood of success on the merits is brief, and  
9 largely focuses on Plaintiffs’ second cause of action, *i.e.*, failure to discharge a  
10 mandatory duty under California Welfare and Institutions Code § 17000. The Court  
11 concludes that “[t]here is, at the very least, a serious question as to whether the City of  
12 Los Angeles and the County of Los Angeles have failed to meet these obligations under  
13 California law.” Dkt. 108 at p. 4. But § 17000 cannot form the basis of an injunction  
14 against the City because: (1) the claim is not asserted against the City (*see* Dkt. 1 at  
15 ¶ 134); and, even if it had been, (2) § 17000 imposes no obligations on the City. *See*  
16 Cal. Welf. & Inst. Code § 17000-17001.5; *Tobe v. City of Santa Ana*, 9 Cal. 4th 1069,  
17 1104 n.18 (1995).

18 The Court cites *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2013) in support of  
19 its conclusion that Plaintiffs are likely to prevail on the merits. Dkt. 108 at p. 4. But as  
20 the Court itself acknowledges, *id.*, *Boise* addressed only Eighth Amendment claims  
21 challenging the enforcement of anti-camping laws against homeless people as cruel and  
22

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23 <sup>10</sup> The Intervenor’s presence in this action does not change the standing analysis.  
24 Intervention under Fed. R. Civ. P. 24 is a procedural means for entering an existing  
25 federal action. *Cantella v. State of Cal.*, 404 F.3d 1106, 1113 (9th Cir. 2004). Rule 24  
26 does not extend the Court’s jurisdiction. *Id.* Intervenor’s “protectable interests” in this  
27 action relate to their respective consent decree and settlement agreement entered in other  
28 actions. *See* Dkt. Nos. 16, 25. Rule 24 cannot be used “to allow the creation of whole  
new lawsuits by the intervenors.” *S. Cal. Edison v. Lynch*, 307 F.3d 794, 803 (9th Cir.  
2002); *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998).

1 unusual punishment in circumstances where they lacked access to shelter and their  
2 conduct was deemed involuntary. Here, Plaintiffs do not allege such claims. Rather,  
3 Plaintiffs are housed residents and businesses who seek to vindicate their own rights  
4 under the Fourteenth Amendment, not the rights of unhoused persons regarding criminal  
5 enforcement under the Eighth Amendment.

6 The Court also states that a public nuisance “may” exist, and that Equal Protection  
7 and Due Process “could plausibly” be implicated. Plaintiffs are unlikely to succeed on  
8 the merits of those claims, either.

9 a. Public Nuisance Claim

10 Plaintiffs allege that the City “perpetuat[e] and facilitate[d] nuisance violations”  
11 by their “failure to maintain the public property under its control, and to enforce the laws  
12 requiring the same.” Dkt. 1 at ¶ 76. The alleged nuisances include blocked sidewalks,  
13 health and safety risks, increased crime, and a general negative impact on quality of life.  
14 *Id.* at ¶ 77.<sup>11</sup> Plaintiffs are unlikely to succeed on this claim. Although nuisance is  
15 broadly defined to include “[a]nything which is injurious to health...” (Cal. Civ. Code §  
16 3479), to state a claim for public nuisance, Plaintiffs must show that the nuisance was  
17 “specially injurious” to them. Cal. Civ. Code § 3493; *County of Santa Clara v. Superior*  
18 *Court*, 50 Cal.4th 35, 55 (2010). This requires Plaintiffs to show that their injuries were  
19 different in *kind* from the general public, not just in magnitude. *See Siskiyou Lumber &*  
20 *Mercantile Co. v. Rostel*, 121 Cal. 511 (1898) (no nuisance claim where obstruction of  
21 sidewalks caused same injury to public as to businesses operating near obstruction).  
22 Plaintiffs cannot make the requisite showing of a special injury because, as even they  
23 concede, the alleged nuisance conditions affect everyone in the City, not just Plaintiffs.  
24 Dkt. 1 at ¶ 58.

25  
26  
27 <sup>11</sup> The Preliminary Injunction re-crafts Plaintiffs’ nuisance theory to focus on the harms  
28 to unhoused persons rather than Plaintiffs. *See* Dkt. 108 at p. 4. As discussed, Plaintiffs  
do not have standing to bring such a claim based on alleged third-party harm.

1                   b.     Equal Protection

2           Plaintiffs allege that the City has violated the Equal Protection Clause by  
3 enforcing its ordinances against unhoused persons less aggressively in Skid Row than in  
4 other areas of the City. Dkt. 1 at ¶ 86. Even assuming the truth of these allegations,  
5 Plaintiffs have not shown, as they must, that the City “acted with an intent or purpose to  
6 discriminate against [them] based upon membership” in a particular group. *Barren v.*  
7 *Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). Nothing in the Complaint suggests  
8 that the City’s decisions on how to enforce its laws in Skid Row were motivated by an  
9 intent to discriminate against Plaintiffs—much less that any such discrimination was  
10 based on membership in the group they represent, *i.e.*, business owners and housed  
11 residents in Skid Row. For this reason, Plaintiffs are unlikely to succeed on their Equal  
12 Protection claim. *See, e.g., Thornton v. City of St. Helens*, 425 F.3d 1158, 1167 (9th Cir.  
13 2005) (facts must demonstrate discriminatory intent).<sup>12</sup>

14                   c.     Due Process (“State Created Danger”) Claim

15           In support of their due process claim, Plaintiffs allege that “Defendants  
16 affirmatively created or increased the risk that Plaintiffs would be exposed to dangerous  
17 conditions, which placed Plaintiffs specifically at risk, and Plaintiffs were harmed as a  
18 result.” Dkt. 1 at ¶ 189. Plaintiffs are unlikely to succeed on this claim.

19           Due process “forbids the government from depriving a person of life, liberty, or  
20 property in such a way that shocks the conscience or interferes with rights implicit in the  
21 concept of ordered liberty.” *Nunez v. City of Los Angeles*, 147 F.3d 867, 871 (9th Cir.  
22 1998) (quotation omitted). It is well settled that the Due Process Clause is not a  
23

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24 <sup>12</sup> Plaintiffs also allege that the *Mitchell* settlement creates this unequal treatment in  
25 enforcement. Plaintiffs cannot rely on the City’s settlements as the basis for their  
26 claims. Litigation-related conduct, including settlements, are protected petitioning  
27 activity; the *Noerr-Pennington* doctrine precludes liability based on such activity. *See*  
28 *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 929 (9th Cir. 2006); *see also Thomas v. Hous.*  
*Auth.*, No. CV 04-6970 MMM (RCx), 2005 U.S. Dist. LEXIS 46426, at \*40-42 (C.D.  
Cal. June 2, 2005) (collecting cases).

1 “guarantee of certain minimal levels of safety and security.” *Martinez v. City of Clovis*,  
2 943 F.3d 1260, 1270-71 (9th Cir. 2019). In fact, “[t]he general rule is that a state is not  
3 liable for its omissions” and due process does not “impose a duty on the state to protect  
4 individuals from third parties.” *Id.* Thus, “[s]imply failing to prevent acts of a private  
5 party is insufficient to establish liability” under the Due Process Clause. *Id.* (citing *Patel*  
6 *v. Kent Sch. Dist.*, 648 F.3d 965, 971 (9th Cir. 2011)). This is true “even if the state was  
7 remiss in allowing the third person to be in a position in which he might cause harm to a  
8 member of the public.” *Ketchum v. Cty. of Alameda*, 811 F.2d 1243, 1247 (9th Cir.  
9 1987).

10 Plaintiffs allege their due process claim is based on the “state created danger”  
11 exception, which is simply not applicable here. Under this limited exception, due  
12 process may require a government to protect a plaintiff if it “affirmatively places” that  
13 plaintiff “in danger by acting with deliberate indifference to a known or obvious  
14 danger.” *Patel*, 648 F.3d at 971-72 (internal citations omitted). Plaintiffs do not  
15 articulate what “danger(s)” form the basis of their claim, much less any “actual,  
16 particularized danger that they would not otherwise have faced.” The Complaint is  
17 devoid of any “affirmative acts” by the City that subjected Plaintiffs to any purported  
18 danger. In fact, to the extent the Complaint discusses affirmative actions taken by the  
19 City, it characterizes them as “impressive and commendable.” Dkt. 1 at ¶ 18. Absent an  
20 affirmative act, the state-created danger exception cannot be invoked here.

## 21 **2. The remaining *Winter* factors do not support the injunction**

22 To obtain injunctive relief, Plaintiffs must also demonstrate “immediate  
23 threatened injury” and that the equities and public interest weigh in favor of an  
24 injunction. *Winter*, 55 U.S. at 20. First, although Plaintiffs claim to have suffered  
25 injuries due to homeless encampments in and around their residences and businesses,  
26 they allege no injuries arising from encampments near freeways. Thus, the Preliminary  
27 Injunction does not address Plaintiffs alleged injuries, but instead focuses on potential  
28 injuries to third parties not before the Court. Second, there is no evidence that the



1 Preliminary Injunction would serve the interests of the public, or even the interests of the  
2 third-party unhoused persons the Court seeks to protect; indeed, there is some  
3 information to the contrary presented to the Court. Absent such evidence, there is no  
4 basis on which to conclude that the equities or public interest favor the preliminary  
5 injunction.

6 **G. If Issued, The Preliminary Injunction Should Be Stayed**

7 Finally, if the Court issues the Preliminary Injunction, the City requests an  
8 immediate stay of the order pending review by the Ninth Circuit Court of Appeals. Fed.  
9 R. Civ. P. 62(c); Fed. R. App. P. 8(a).

10 **IV. CONCLUSION**

11 The City shares the Court's deep concern for the safety and health of homeless  
12 residents living near freeways, and appreciates all the efforts the Court has undertaken to  
13 mediate a resolution of this case for the benefit of all. But, for all the reasons set forth  
14 above, the Court should not issue the Preliminary Injunction. The City again requests  
15 this Court permit the parties briefly to continue negotiations. In the alternative, the City  
16 request the Court immediately stay its Preliminary Injunction pending appellate review.

17 DATED: May 21, 2020

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